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15 UNITED STATES DISTRICT COURT  
16 CENTRAL DISTRICT OF CALIFORNIA  
17 WESTERN DIVISION  
18

19 MAN MACHINE INTERFACE  
20 TECHNOLOGIES, LLC,

21 Plaintiff,

22 v.

23 LOGITECH INTERNATIONAL SA, a  
Swiss corporation AND LOGITECH  
24 INC., a California corporation,

25 Defendants.  
26  
27  
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Case No. CV-09-7901 JFW (AJWx)  
PROTECTIVE ORDER

1 WHEREAS, certain documents, information (including electronically stored  
2 information), tangible objects, and things may be produced in discovery in this  
3 proceeding and may include product designs, product development histories,  
4 engineering drawings, research, manufacturing records, assembly plans, product  
5 testing, bills of materials, CAD/CAM drawings, customer lists, marketing surveys  
6 competition analysis, product sales, and financial information such as prices, profit  
7 margins, gross margins, and costs.

8 WHEREAS, these materials and information may comprise sensitive and  
9 highly confidential business information, trade secrets<sup>1</sup>, know how, business  
10 strategies, financial, technological, commercial, and proprietary information

11 WHEREAS, disclosure of parties confidential information of any party to  
12 another party, or to the public, may irreparably harm that party's business interests.

13 WHEREAS, protection of this information benefits not only the parties, but  
14 also the public.

15  
16 NOW, THEREFORE, subject to the approval of this Court, the parties hereby  
17 stipulate through their respective counsel of record to the following protective  
18 order:

19 **PROTECTIVE ORDER**

20 This Protective Order is issued to facilitate document disclosure and production  
21 under the Local Rules of this Court and the Federal Rules of Civil Procedure.  
22 Unless modified pursuant to the terms contained in this Order or by further Order of  
23

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24 <sup>1</sup> As used herein, "trade secret" shall have the definition provided in Section 3426.1  
25 of the California Civil Code and shall mean: Information, including a formula,  
26 pattern, compilation, program, device, method, technique, or process, that: (1)  
27 Derives independent economic value, actual or potential, from not being generally  
28 known to the public or to other persons who can obtain economic value from its  
disclosure or use; and (2) Is the subject of efforts that are reasonable under the  
circumstances to maintain its secrecy.

1 the Court, this Order shall remain in effect both through and after the conclusion of  
2 this litigation.

3 The parties herein anticipate that documents, testimony, and information  
4 containing or reflecting confidential, proprietary, trade secret, or commercially  
5 sensitive information are likely to be disclosed in this litigation, and request that the  
6 Court enter this Order setting forth the conditions for the disclosure, treatment, and  
7 use of such information. Therefore, pursuant to Federal Rule of Civil Procedure  
8 26(c), the Court finds good cause for and enters this Protective Order (“Order”).

9  
10 1. DEFINITIONS

11 (a) “Confidential Information” means any Discovery Material that is  
12 designated as “CONFIDENTIAL” as provided for in this Order. Confidential  
13 Information may be incorporated within or include documents, tangible things, and  
14 witness testimony.

15 (b) “Discovery Material” means all information, including from any non-  
16 party to this action, regardless of the medium or manner generated, stored, or  
17 maintained (including, among other things, testimony, transcripts, or tangible  
18 things) that is produced, disclosed, or generated in connection with discovery in this  
19 matter.

20 (c) “Party” means any party to this action, including all of its officers,  
21 directors, and employees.

22 (d) “Producing Party” means any Party or third party who discloses or  
23 produces any Discovery Material in this action.

24 (e) “Receiving Party” means any Party who receives Discovery Material  
25 from a Producing Party.  
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1           2.     SCOPE AND PURPOSES

2           (a) The protections conferred by this Order cover and govern the designation  
3 of, use, and disclosure of Confidential Information and related Discovery Material,  
4 including any information copied or extracted therefrom, and all copies, excerpts,  
5 summaries, or compilations thereof, including testimony, conversations, or  
6 presentations by Producing Parties or Receiving Parties or their counsel in Court or  
7 in other settings that might reveal Confidential Information.

8           (b) Confidential Information shall be used solely for this litigation, and not  
9 for any other purpose whatsoever, including without limitation any other litigation,  
10 patent prosecution or acquisition, or any business or competitive purpose or  
11 function. Confidential Information shall not be distributed, disclosed or made  
12 available to anyone except as expressly provided in this Order.

13           (c) Any Producing Party who designates Confidential Information under this  
14 Order shall do so only with a good faith belief that the designated material is  
15 Confidential Information that is protectable under Federal Rule of Civil Procedure  
16 26(c) and the terms of this Order. If it comes to a Producing Party's attention that  
17 designated material does not qualify for protection at all, or does not qualify for the  
18 level of protection asserted, the Producing Party must promptly notify all other  
19 parties that it is withdrawing or changing the designation.

20           (d) Any person challenging a Producing Party's designation of Confidential  
21 Information under this Order shall do so only with a good faith belief that  
22 designated material is not protectable Confidential Information under Federal Rule  
23 of Civil Procedure 26(c) and the terms of this Order.

24           3.     LIMITATIONS AND PRESERVATION OF RIGHTS

25           (a) Nothing in this Order shall prevent or restrict a Producing Party's own  
26 disclosure or use of its own Confidential Information for any purpose.  
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1 (b) Nothing in this Order shall preclude any person or party from disclosing  
2 Confidential Information to an individual who prepared the Confidential  
3 Information or is already in possession of the Confidential Information.

4 (c) Nothing in this Order shall restrict in any way the use or disclosure of  
5 Confidential Information by a Receiving Party: (a) that is or has become publicly  
6 known through no fault of the Receiving Party; (b) that is lawfully acquired by or  
7 known to the Receiving Party independent of the Producing Party; (c) that has been  
8 previously produced, disclosed or provided by the Producing Party to any other  
9 party without an obligation of confidentiality and not by inadvertence or mistake;  
10 (d) with the consent of the Producing Party; or (e) pursuant to order of the Court.

11 (d) Nothing in this Order shall be construed to prejudice any Party's right to  
12 use any Confidential Information in Court or in any Court filing with consent of the  
13 Producing Party or Order of the Court.

14 (e) This Order is without prejudice to the right of any Party or non-party to  
15 seek further or additional protection of any Confidential Information, to dedesignate  
16 Confidential Information, or to modify this Order in any way, including, without  
17 limitation, seeking: (1) a protective order that certain Confidential Information or  
18 Discovery Material not be produced at all; (2) to compel the disclosure of or de-  
19 designate Confidential Information or Discovery Material; or (3) to modify, add to,  
20 or remove provisions set forth in this Order.

#### 21 4. ACCESS TO AND USE OF CONFIDENTIAL INFORMATION

22 (a) Secure Storage. Confidential Information must be stored and  
23 maintained by a Receiving Party at a location and in a secure manner that  
24 reasonably ensures that access is limited to the persons authorized under this Order.  
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26 (b) Legal Advice Based on Confidential Information. Nothing in this Order  
27 shall prevent Counsel from advising their clients with respect to this litigation based  
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1 in whole or in part upon Confidential Information, provided Counsel does not  
2 disclose the Confidential Information itself except as provided in this Order.

3 5. DESIGNATING CONFIDENTIAL INFORMATION

4  
5 (a) Available Designations. A Producing Party may designate its own  
6 Discovery Material with any of the following designations, provided that it meets  
7 the requirements for such designations as provided for herein "CONFIDENTIAL".

8 (b) Written Discovery and Documents and Tangible Things. Written  
9 discovery, documents, and tangible things that meet the requirements for the  
10 confidentiality designations listed in Paragraph 5(a) may be so designated by  
11 placing the appropriate designation on every page of the written material. In the  
12 event that original documents are produced for inspection, the Producing Party may  
13 produce the original documents for inspection with a temporary designation that is  
14 suitable under the circumstances, provided that copies of the original documents  
15 shall be similarly designated by placing the appropriate legend on the copies when  
16 they are produced to or by the Receiving Party.

17 (c) Depositions and Testimony. Parties or testifying persons or entities may  
18 designate depositions and other testimony with the appropriate designation (i) by  
19 indicating on the record at the time the testimony is given or (ii) by sending written  
20 notice that the testimony is designated within thirty (30) calendar days of receipt of  
21 the transcript of the testimony. Whether or not any designation is made at the time  
22 the testimony was given, all testimony shall be treated as if it had been designated  
23 "CONFIDENTIAL" from the date of the testimony until thirty (30) calendar days  
24 after receipt of the transcript of the testimony. Testimony not designated either  
25 orally at the time of the testimony or by written notice to the Parties within thirty  
26 (30) calendar days after receipt of the transcript of the testimony shall be deemed  
27 not to be Confidential Information, subject, however, to the other terms of this  
28 Order. Any designated Discovery Material that is used in the taking of a deposition

1 shall remain subject to the provisions of this Order, along with the transcript pages  
2 of the deposition testimony dealing with such Discovery Material. In the event the  
3 deposition is videotaped, the original and all copies of the videotape shall be  
4 marked by the video technician to indicate that the contents of the videotape are  
5 subject to this Order, substantially along the lines of "This videotape contains  
6 confidential testimony used in this case and is not to be viewed or the contents  
7 thereof to be displayed or revealed except as permitted by the Protective Order, by  
8 order of the Court, or pursuant to written stipulation of the parties."

9 6. DISCOVERY MATERIAL DESIGNATED AS "CONFIDENTIAL"

10 (a) A Producing Party may designate Discovery Material as  
11 CONFIDENTIAL if it contains or reflects information that is extremely  
12 confidential and/or sensitive in nature and the Producing Party reasonably believes  
13 that the disclosure of such Discovery Material is likely to cause economic harm or  
14 significant competitive disadvantage to the Producing Party.

15 (b) Discovery Material designated as "CONFIDENTIAL" may be disclosed  
16 only to:

17  
18 (i) The Receiving Party's legal counsel as of the signing of this  
19 protective order including attorneys within outside litigation counsel's  
20 respective law firms and their staff;

21 (ii) Any expert or consultant retained by the Receiving Party to assist  
22 in this action (as well as members of such person's staff to whom disclosure  
23 is reasonably necessary for this litigation), provided that disclosure is only to  
24 the extent necessary to perform such work; and provided that: (a) each such  
25 person (including staff members) has signed the acknowledgement form  
26 annexed hereto as Exhibit A, (b) a copy of the signed acknowledgement form  
27 has been provided to all counsel of record at least ten (10) days in advance of  
28 such disclosure, and (c) no unresolved objections to such disclosure exist



1 after proper notice has been given to all parties as set forth in Paragraph 8(b)  
2 below.

3 (iii) Court reporters, stenographers and videographers retained to  
4 record testimony taken in this action;

5 (iv) The Court, jury, and Court personnel;

6 (v) Graphics, translation, design, and/or trial consulting services  
7 including mock jurors retained by a Party;

8 (vi) Two persons who are parties or management representatives of  
9 parties who have signed the acknowledgement for annexed hereto and have  
10 been identified in writing to counsel of record.

11 (vii) Any mediator selected by the parties to mediate this action; and

12 (viii) Any other person with the prior written consent of the Producing  
13 Party.

14 (c) Prior to disclosing any Confidential Information to any outside experts or  
15 consultants, the party seeking to disclose such information shall provide the  
16 Producing Party with written notice that includes: (i) the name of the person; (ii) the  
17 present employer and title of the person; (iii) an up-to-date curriculum vitae of the  
18 person; and (iv) a copy of the signed acknowledgment form annexed hereto as  
19 Exhibit A.

20 (d) Within ten (10) calendar days of receipt of the disclosure of the proposed  
21 outside expert or consultant the Producing Party may object in writing to the  
22 disclosure of its Confidential Information to such person for good cause. In the  
23 absence of an objection at the end of the ten (10) day period, the person shall be  
24 deemed approved under this Order. There shall be no disclosure of Confidential  
25 Information to such person prior to expiration of this ten (10) day period. If the  
26 Producing Party objects to disclosure to such person within the ten (10) day period,  
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1 the parties shall meet and confer within ten (10) business days, unless the parties  
2 stipulate in writing to extend the meet and confer period, and attempt in good faith  
3 to resolve the dispute. If the dispute is not resolved, the party objecting to the  
4 disclosure will have twenty (20) calendar days from the date of the meet and confer  
5 to seek relief from the Court, unless otherwise agreed by the parties. If relief is not  
6 sought from the Court within that time (or any other time agreed to by the parties),  
7 the objection shall be deemed withdrawn. If relief is sought, the objecting party's  
8 Confidential Information shall not be disclosed to such person until the objection is  
9 resolved by the Court.

10 (e) For purposes of this section, "good cause" shall include an objectively  
11 reasonable concern that the expert, consultant, or in-house counsel will, advertently  
12 or inadvertently, use or disclose Confidential Information in a way or ways that are  
13 inconsistent with the provisions contained in this Order including, in particular, for  
14 a purpose other than related to this litigation (e.g., for competitive decision making,  
15 for developing its own products or technologies, or to misappropriate competitor  
16 trade secrets).

17 (f) Prior to receiving any Confidential Information under this Order, the  
18 proposed outside expert or consultant or any member of their respective staffs must  
19 execute a copy of the "Agreement to Be Bound by Protective Order" attached as  
20 Exhibit A to this Order.

21 (g) Return of Confidential Information by experts and consultants:  
22 Confidential Information disclosed to any expert or consultant may be retained by  
23 such expert or consultant provided that such expert or consultant subsequently  
24 returns any and all copies of such Confidential Information to the Producing Party  
25 promptly upon termination of their engagement or in compliance with the  
26 provisions of Section 15 (Final Disposition), whichever occurs sooner.  
27  
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1 9. CHALLENGING DESIGNATIONS OF CONFIDENTIAL  
2 INFORMATION

3 (a) A Party shall not be obligated to challenge the propriety of any  
4 designation of Discovery Material as Confidential Information under this Order at  
5 the time the designation is made, and a failure to do so shall not preclude a  
6 subsequent challenge thereto.

7 (b) Other than challenges to a designation made at a deposition or hearing  
8 (which challenges may be made orally on the record at the time of the testimony),  
9 any challenge to a designation of Discovery Material under this Order shall: (i) be  
10 written and served on counsel of record for the Producing Party, (ii) shall  
11 particularly identify the documents or information that the Receiving Party  
12 contends should be differently designated, and (iii) shall particularly identify the  
13 grounds for the objection to the designation. Thereafter, further protection of such  
14 material shall be resolved in accordance with the following procedures:

15 (i) The objecting party shall have the burden of conferring with the  
16 Producing Party claiming protection in a good faith effort to resolve the dispute.

17 (ii) Failing agreement, the objecting party may bring a motion that the  
18 Discovery Material is not entitled to the designation made by the Producing Party.

19 (iii) This Order shall not preclude or prejudice any Producing Party of any  
20 Receiving Party from arguing for or against any designation, establish any  
21 presumption that a particular designation is valid, or alter the burden of proof that  
22 would otherwise apply in a dispute over discovery or disclosure of information.

23 (iv) Notwithstanding any challenge to a designation, the Discovery Material  
24 shall continue to be treated as designated by the Producing Party under this Order  
25 until otherwise resolved by agreement of the parties or by further order of the  
26 Court.  
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1           10. SUBPOENAS OR COURT ORDERS

2           If at any time Confidential Information is subpoenaed by any court, arbitral,  
3 administrative, or legislative body, the Party to whom the subpoena or other request  
4 is directed shall promptly give written notice thereof to every Producing Party who  
5 has produced such Discovery Material and shall provide each such Producing Party  
6 with an opportunity to move for a protective order regarding the production of  
7 confidential materials.

8           11. FILING CONFIDENTIAL INFORMATION

9  
10          (a) Absent written permission from the Producing Party or a Court order  
11 secured after appropriate notice to all interested persons, a Receiving Party may not  
12 file in the public record any Confidential Information.

13          (b) Any Receiving Party is authorized under Local Rule 79-5 to file under  
14 seal with the Court any brief, document or materials that are designated as  
15 Confidential Information under this Order.

16          (c) In the event that the Court, sua sponte, declines to allow the filing under  
17 seal of a document designated as Confidential Information by someone other than  
18 the filing party, the parties agree that: (1) the party who so designated the document  
19 as Confidential Information shall have five (5) business days or, if earlier, the time  
20 allotted by Order or the Local or Federal Rules for re-filing the document to  
21 provide a declaration to the filing party setting forth a justification for its  
22 designation and (2) they will not on the basis of this ground argue that the  
23 document is untimely filed. Failure of a designating party to timely provide such a  
24 declaration shall result in the document losing its confidentiality designation.  
25 Nothing in this provision, requires the parties to follow the procedures set forth in  
26 this provision to the extent such procedures conflict with a Court Order or the  
27 Federal or Local Rules.  
28

1           12. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL

2           (a) The inadvertent production by a Producing Party of Discovery Material  
3 subject to the attorney-client privilege, work-product immunity, or any other  
4 applicable privilege or immunity will not waive the applicable privilege or  
5 immunity if a request for return of such inadvertently produced Discovery Material  
6 is made promptly after the Producing Party, using due diligence, learns of its  
7 inadvertent production.

8           (b) Upon a request from any Producing Party who has inadvertently  
9 produced Discovery Material that it believes is privileged or immune, each  
10 Receiving Party shall immediately (i) return to the Producing Party or destroy such  
11 Discovery Material and all copies and supply written notice to the Producing Party  
12 that it has done so and retained no copies; or (ii) object to the assertion of privilege  
13 or immunity and make no further disclosure of the Discovery Material until the  
14 matter is resolved pursuant to a motion to be made by the Producing Party within  
15 ten (10) calendar days.

16           (c) Nothing herein shall prevent the Receiving Party from preparing a record  
17 containing the date, author, recipients, and topic of the inadvertently produced  
18 Discovery Material and such other non-privileged/non-immune information as is  
19 reasonably necessary to identify and describe the Discovery Material in any motion  
20 to compel production of the Discovery Material.

21           13. INADVERTENT FAILURE TO DESIGNATE

22           (a) The inadvertent failure by a Producing Party to designate Discovery  
23 Material as Confidential Information with one of the designations provided for  
24 under this Order shall not waive any such designation provided that the Producing  
25 Party promptly notifies all Receiving Parties that such Discovery Material is  
26 protected under one of the categories of this Order after learning of the inadvertent  
27 failure to so designate.  
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(b) A Receiving Party shall not be in breach of this Order for any use of such Discovery Material before the Receiving Party receives notice of the inadvertent failure to designate. Once a Receiving Party has received notice of the inadvertent failure to designate pursuant to this provision, the Receiving Party shall treat such Discovery Material (subject to the exception in Paragraph (c) below) at the appropriately designated level pursuant to the terms of this Order.

(c) If the Receiving Party disputes the designation, the provisions of Section 9 shall apply to that dispute.

#### 14. INADVERTENT DISCLOSURE OF CONFIDENTIAL INFORMATION

(a) In the event of a disclosure of any Confidential Information pursuant to this Order to any person or persons not authorized to receive such disclosure under this Order, the Receiving Party responsible for having made such disclosure, and each Party with knowledge thereof, shall immediately notify counsel for the Producing Party whose Confidential Information has been disclosed and provide to such counsel all known relevant information concerning the nature and circumstances of the disclosure. The disclosing Party shall also promptly take all reasonable measures to retrieve the improperly disclosed Confidential Information and to ensure that no further or greater unauthorized disclosure and/or use thereof is made.

(b) Unauthorized or inadvertent disclosure does not change the status of Confidential Information or waive the right to hold the disclosed document or information as protected.

#### 15. FINAL DISPOSITION

(a) Not later than ninety (90) days after the final disposition of this litigation (including after any appeals) each Party shall return to the respective counsel of the

1 Producing Party or destroy all Confidential Information of a Producing Party. All  
 2 Receiving Parties of any such Confidential Information shall certify in writing that  
 3 all such materials have been returned to the respective outside counsel of the  
 4 Producing Party or destroyed.

5 (b) Notwithstanding the provision for return or destruction of Confidential  
 6 Information in paragraph (a) above, outside counsel may retain pleadings,  
 7 correspondence to or from counsel for the opposing Party(ies), and attorney and  
 8 consultant work product that include or refer to another party's Confidential  
 9 Information as part of the case record and for archival purposes.

## 10 16. DURATION AND JURISDICTION

11  
 12 Even after the termination of this case, this Order and its terms, requirements, and  
 13 effects shall survive and remain in full force and effect in its entirety until this  
 14 Court otherwise directs by order. The Court shall retain jurisdiction over any and all  
 15 persons and parties bound by this Order for the purposes of hearing and resolving  
 16 any disputes related to or arising out of this Order.

## 17 17. MISCELLANEOUS

18 (a) Right to Further Relief. Nothing in this Order abridges the right of any  
 19 person to seek modification of the Order by the Court in the future. By stipulating  
 20 to this Order, the Parties do not waive the right to argue that certain material may  
 21 require additional or different confidentiality protections than those set forth herein.

22 (b) Successors. This Order shall be binding upon the Parties hereto, their  
 23 attorneys, successors, assigns, subsidiaries, divisions, employees, agents, retained  
 24 consultants and experts, and any persons or organizations over which they have  
 25 direct control.

26 (c) Burdens of Proof. Nothing in this Order shall be construed to change the  
 27 burdens of proof or legal standards applicable in disputes regarding whether  
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1 particular Discovery Material is confidential, which level of confidentiality is  
2 appropriate, whether disclosure should be restricted, and, if so, what restrictions  
3 should apply.

4 (d) Modification by Court. This Order is subject to further court order based  
5 upon public policy or other considerations, and the Court may modify this Order  
6 sua sponte in the interests of justice. The United States District Court for the  
7 Central District of California, Western Division, is responsible for the interpretation  
8 and enforcement of this Order. All disputes concerning Confidential Information,  
9 however designated, produced under the protection of this Order shall be resolved  
10 by the United States District Court for the Central District of California, Western  
11 Division.

12 (e) Modification by stipulation or motion to the Court. Parties agree that this  
13 Order may be amended by stipulation, subject to Court approval, or by motion to  
14 the Court. Potential amendments may include, but are not limited to, (i) the  
15 addition of a "CONFIDENTIAL – Attorney Eyes Only" designation, (ii) the  
16 addition of a "PATENT PROSECUTION BAR" designation, and (iii) the addition  
17 of provisions to address source code inspection.

18 SO STIPULATED.  
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1 Dated: April 12, 2010

ROBERT A. SCHROEDER  
Sheldon Mak Rose & Anderson

4 /s/ Robert A. Schroeder /s/

Robert A. Schroeder  
Attorneys for Plaintiff  
MAN MACHINE INTERFACE TECHNOLOGIES,  
LLC

8 Dated: April 12, 2010

I. NEEL CHATTERJEE  
ZHENG LIU  
RICHARD S. SWOPE  
Orrick, Herrington & Sutcliffe LLP

11 /s/ I. Neel Chatterjee /s/

I. Neel Chatterjee  
Attorneys for Defendants  
LOGITECH INTERNATIONAL SA and  
LOGITECH INC.

16 **IT IS SO ORDERED.**

17 Dated: 4/20/2010

Andrew J. Wistrich

Hon. Andrew J. Wistrich  
United States Magistrate Judge

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

MAN MACHINE INTERFACE  
TECHNOLOGIES, LLC,

Plaintiff,

v.

LOGITECH INTERNATIONAL SA, a  
Swiss corporation AND LOGITECH  
INC., a California corporation,

Defendants.

Case No. CV-09-7901 JFW (AJWx)

PROTECTIVE ORDER

I, \_\_\_\_\_, acknowledge and declare that I have received a copy of the Protective Order ("Order") in Man Machine Interface Technologies, LLC v. Logitech International SA, et al., Case No. CV 09-7901 JFW (CACD Western Division). I have read the Order, I understand and agree to be bound by its terms, and I consent to the jurisdiction of this Court for the purpose of any proceeding to enforce the terms of the Order.

Present occupation/job description: \_\_\_\_\_.

Name of Company or Firm: \_\_\_\_\_.

Address: \_\_\_\_\_.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this \_\_\_\_ day of \_\_\_\_\_, 2010 at \_\_\_\_\_.

By \_\_\_\_\_.